

afterwards, Thomas D. Cockey and John Fendal, two justices of the peace, who had, the evening before, been sent for and requested, by the defendant, to attend there on that morning, were introduced into *the plaintiff's chamber by the defendant; **395** they found the plaintiff quite awake, and interchanged with her the usual salutations on the meeting of acquaintances. Immediately after the coming in of these justices the defendant produced the instrument of writing referred to in the proceedings as the deed of the 15th June, 1824; and offered it to the plaintiff for execution. The defendant raised the plaintiff up, and assisted in seating her in bed; and then on being accommodated by a desk placed in her lap to write upon, and having her hand steadied or guided by Justice Fendal, the plaintiff signed the instrument of writing and acknowledged it as her act and deed; and these justices took and certified the acknowledgment accordingly. This instrument of writing so signed by the plaintiff, which conveyed the whole of her property, was not then read to, or by her; nor does it appear, that she ever once saw it before; nor was there at that time any conversation upon the subject. No one else was then present in the room but these four persons, the two parties, and the two justices. And, after a stay of about one hour in the house, the two justices departed. (*n*)

These justices (one of whom Fendal, only it appears but once ever saw the plaintiff at any other time during the illness under which she was then suffering,) both assert, that when they took her acknowledgment of the deed, she was in a sound state of mind. But other witnesses testify, that on the morning of that day she was in rather a weaker condition than on the evening before; that her mind was evidently wandering; and that she was manifestly

(*n*) I have shewn in a former case, (*H. K. Chase's Case*, *ante*, 206,) that a private acknowledgment of a deed of conveyance by a *feme covert* was introduced here as a substitute for a fine, and that such an acknowledgment was held to be as binding upon her, although not altogether as effectual against third persons, as a fine. A person *non compos mentis* cannot levy a fine, or make a conveyance of his property in that mode, because the Judges will not receive the acknowledgment of an insane person; but if a Judge does receive the acknowledgment of a fine from the most monstrous and visible idiot, it will be held to be final and conclusive against him; because, as a judicial record, it cannot be questioned;—(*Mansfield's Case*, 12 Co. 124, and 10 Co. 42;) yet a fine is said to be nothing more than a common conveyance. This pernicious incongruity between a conveyance by deed, and by fine in England, it is said, is about to be removed by a statute abolishing fines and recoveries, and substituting deeds of conveyance, which are to have the same effect without being considered as conclusive judicial records. (*Shelf. Lun. & Idiots*, 248, *note*.) But in Maryland, the acknowledgment of a deed before Justices of the Peace, although in some particulars treated as the substitute of a fine, has never been considered, like a fine, as a judicial record, and to that extent conclusively binding upon the party.—(*Lewis' Lessee v. Waters*, 3 H. & McH. 480.)